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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,018	09/17/2003	Gregg Berretta	9-16123-1US	2740

20988 7590 02/07/2005  
OGILVY RENAULT  
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MONTREAL, QC H3A2Y3  
CANADA

EXAMINER
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WIEKER, AMANDA FLYNN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/664,018

Applicant(s)

BERRETTA, GREGG

Examiner

Amanda F. Wieker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on 19 September 2002. It is noted, however, that applicant has not filed a certified copy of the Canadian application number 2,400,253 as required by 35 U.S.C. 119(b).

### *Specification*

2. The use of the trademark VELCRO® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not provide antecedent basis for the term "shell" as used in claims 1 and 2.

### *Claim Objections/Suggestions*

4. Claim 2 is objected to because of the following informalities:

At line 9, the phrase "and strap fasteners" should be replaced with --and pull strap fasteners-- to be clear that these strap fasteners are the same as those previously recited in line 5.

At line 13, "contoured tab" should be replaced with --contoured pad--.

At line 17-18, "the corrective position" should be replaced with --a corrective position-- to provide adequate antecedent basis.

Appropriate correction is required.

5. At line 13 of claim 2, it is suggested that the following phrase be added to more clearly define the structure of the invention: --the contoured pad with the pull strap fasteners--.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 4,928,670 to DeLorenzo.

DeLorenzo discloses a pad (24) for attachment to a brace (10) for relief of a varus or valgus osteo arthritic condition of the knee; the pad comprising

a contoured shell (made of rubber; col. 5, lines 17-22),

a shell lining (foam; col. 5, lines 17-22),

a single pivot point (22),

and pull strap fasteners (see marked-up figure below);

the pivot point located near the apex (see marked-up figure below and dictionary definition of “apex”) of the contoured lined shell;

the pull strap fasteners located on both sides proximate the middle of the contoured shell (again, see marked-up figure below).

DeLorenzo further discloses a brace (10) for relief of an osteo arthritic varus or valgus condition; the brace comprising

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a femoral member (16, 20, 12),

a tibial member (18, 30, 14),

hinges (at 22),

a contoured pad (24),

pull straps (28, 29),

loops (32)

and pull strap fasteners (see marked-up figure below);

the femoral member and tibial member being connected by said hinges;

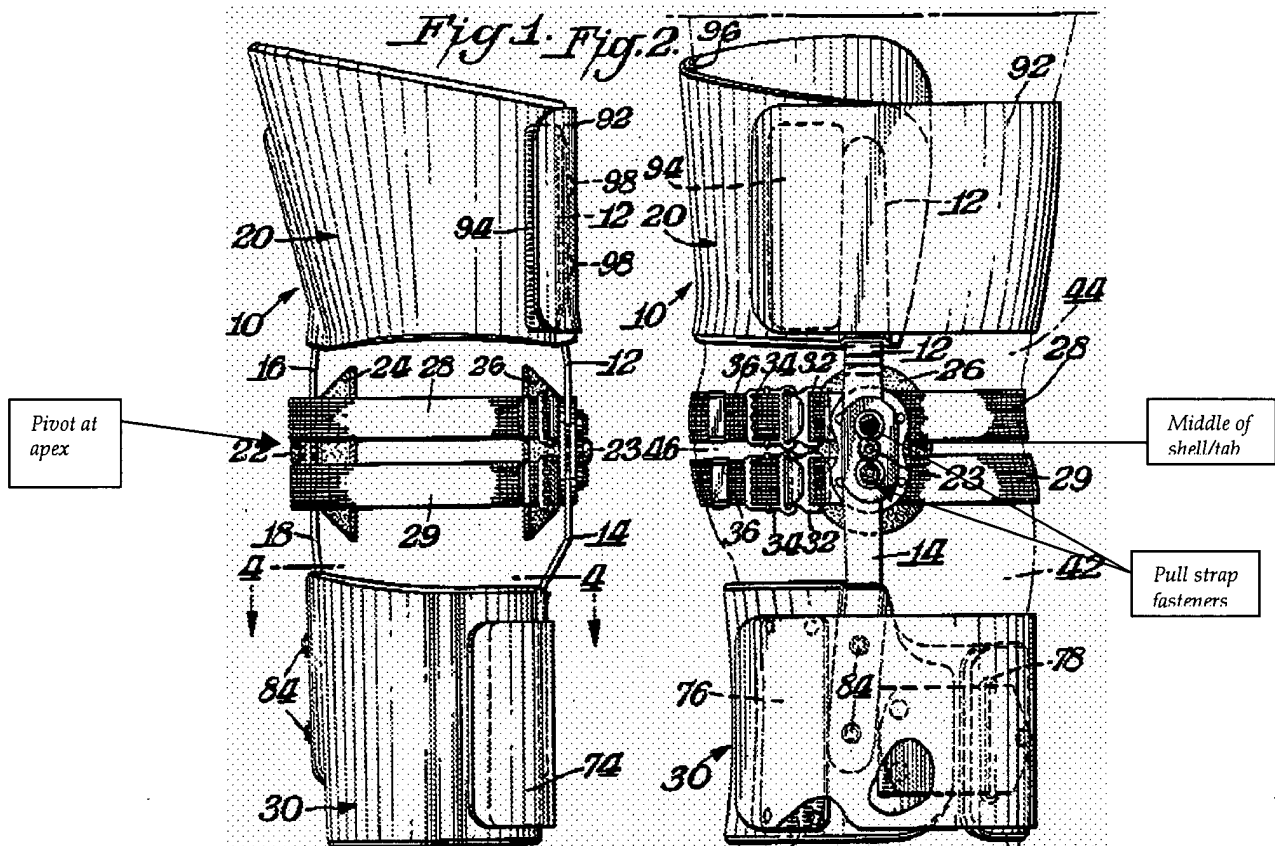
the contoured pad (24) comprised of a shell (made of rubber; col. 5, lines 17-22), a soft shell lining (foam; col. 5, lines 17-22), a single pivot (22) and pull strap fasteners (see marked-up figure below);

the apex of the contoured pad is connected at a single point to the femoral member (see marked-up figure below);

pull straps (28, 29) fastened to either side at the mid portion of the contoured tab (see marked-up figure below);

loops (32) to receive the pull straps located on the side of the femoral member opposite the pad (located at 26), and

fastening means (34) on the pull straps to fasten the pull straps to one another when the pad is in the corrective position.



### Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

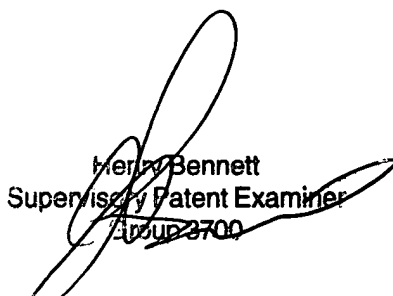
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Amanda F. Wieker  
Examiner  
Art Unit 3743

afw



Henry Bennett  
Supervisory Patent Examiner  
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